FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.3024 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Amit Desai, Sr.Counsel with Prakash Naik, A.P.Hariani and N.F.Dhilla i/by M/s.Hariani & Co. for the petitioners.

Mr.S.R.Shinde, APP for the State.

Coram : R.S.Mohite,J

Date : 20.02.2006.

PC

1. This is a petition for quashing of a criminal case bearing no.C.C.4485/4/05 arising out of C.R.No.3088/2003 registered with Bund Garden police station, Pune, which is pending in the Court of JMFC, IIIrd Court Pune. In the said case the Court has issued process for offences punishable under Sections 336 & 337 r/w 34 of IPC. The police case was initiated by a complaint lodged with the Bund Garden police station by one Mr.Suresh Talera whose wife was operated in the

operation theatre of Jehangir hospital. The said operation was performed on her in June-2002. Later on she developed infection and her wound did not heal. After the complaint was lodged, petition came to be filed in this Court making a grievance that the same was not investigated properly. However, statement came to be made on behalf of the State that accused has been arrested and that charge-sheet had been filed. In the circumstances, petition was withdrawn. Thereafter process has been issued in this case. On behalf of the applicants strong reliance was placed upon a judgment of the Apex Court in the case of **Jacob Mathew V/s.State of Punjab & Anr. reported in 2005(3) Crimes 63 (SC)**. In the said case, Apex Court has laid down certain guidelines required to be born in mind in cases involving rash and negligent acts of Doctors in the medical profession. In my view, I am not concerned in the present case with the acts of any Surgeon

or physician. The allegation of the complainant is that the operation theatre where the operation was performed on her was infected. The police had called for a professional opinion from the administrative office of Sasoon general hospital. The report given by the administrative office of the Sasoon general hospital indicates that wife of the complainant Sushila acquired infection caused by bacteria due to conteminated water in the operation theatre. As such the allegation in the present case is not of rashness or negligence by a professional but rashness and negligence by the administration of the hospital.

2. There is some material on record such as the statement of the Chairman which indicates that the trustees of the hospital are only doing day to day work. The chairman has named the three accused as the persons who are knowledgable in this particular

case. Since the trial is yet to commence, I do not wish to make any detailed comments. Suffice it to say that at this stage it would be difficult to give a clean chit to the accused persons. Relying on medical text books, it was sought to be contended that there was infection in all operation theatres. It is seen from the record that two other cases of infection occurred in March as well as in May-2002. In the circumstances, in my view, the petition cannot be entertained.

3. It was brought to my notice that accused nos.1 & 3 are doctors and accused nos.2 & 3 are presently in Delhi. I feel that it would be desirable that the trial of this nature should proceed expeditiously. APP after taking instructions from the investigating officer who is present in the Court, states that the petitioners may be granted exemption except for the purpose of recording of plea and as and

when they are directed to remain present by the trial Court. In the circumstances, exemption is granted to the petitioners from remaining present for the trial except for recording of plea and on occasions when their presence is directed by the trial Court. Subject to these directions, petition stands dismissed.

(R.S.Mohite,J)